

REMARKS

Claim Status

Claims 1–64 are pending in the instant application. With this amendment, claims 1, 3, 7–9, 12, 13, 27, 29 and 42–46 have been amended to ensure correct antecedent basis for claim terms/phrases. No new matter is added by the amendment of the claims. Accordingly, entry into the instant application is proper and respectfully requested.

Double Patenting

Claims 1–64 are rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1–36 of U.S. Patent No. 7,142,987. Filed concurrently with this amendment is a Terminal Disclaimer relating to U.S. Patent No. 7,142,987, which is being submitted on behalf of GenVault Corporation, the assignee of 100% of Applicant's interest in the present application. The filing of this Terminal Disclaimer obviates the present nonstatutory obviousness-type double patenting rejection. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Claims 1–64 are also rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1–40 and 58–69 of copending Application No. 10/007,355. Applicant submits that Application No. 10/007,355 is currently pending, subject to 35 U.S.C. § 102(e) rejections, and was filed on *the same date* as the present application. Under such circumstances, a nonstatutory obviousness-type double patenting rejection should be withdrawn, since the issue of double patenting can be raised in Application No. 10/007,355 in the event that claims in that application become otherwise allowable. See MPEP 804 I.B.1 (noting that, in situations where a nonstatutory obviousness-type double patenting rejection has been issued in light of a co-pending application and is the only rejection remaining, while the co-pending application remains rejected on other grounds, the nonstatutory obviousness-type double patenting rejection should be withdrawn unless the co-pending application has an earlier filing date). Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Claims 1–64 are also rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claim 1–64 and 86–117 of copending Application

No. 10/150,771, and claims 1–2, 4–11, 13–16, 35–42 and 44–51 of copending Application No. 10/252,352. Applicant submits that Application Nos. 10/150,771 and 10/252,352 are currently pending, subject to rejections based on 35 U.S.C. §§ 102(b), 102(e), 103(a), and/or 112, and were both filed *after* the filing date of the present application. Under such circumstances, nonstatutory obviousness-type double patenting rejections should be withdrawn. *See* MPEP 804 I.B.1 (“If a ‘provisional’ nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejected on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.”). Accordingly, Applicant respectfully requests that this rejection be withdrawn.

CONCLUSION

In light of the above amendments and remarks, Applicant respectfully submits that claims 1–64 satisfy all the criteria for patentability and are in condition for allowance. Applicant requests that the Examiner reconsider this application with a view towards allowance and solicits early passage of claims 1–64 to issuance. The Examiner is invited to call the undersigned attorney, if a telephone call could help resolve any remaining items.

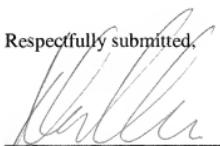
Pursuant to 37 CFR § 1.136(a)(3), the Commissioner is hereby authorized to charge all required fees, including fees under 37 CFR § 1.17 and all required extension of time fees, or credit any overpayment, to Deposit Account No. 50-1283.

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Respectfully submitted,


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